Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

RICHARD PIEPER

Petitioner/appellant

AGAINST

AMERICAN ARBITRATION ASSOCIATION
and
GERALD HAMBLY

Respondents

Petition For Writ of Certiorari to the United States Supreme Court

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QUESTIONS PRESENTED

Whether the *Rooker-Feldman* doctrine bars a Federal Court from assuming jurisdiction relative to an interlocutory matter (arising from a lawsuit in a State Court setting) that has constitutional implications under the United States Constitution.

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IN THE SUPREME COURT OF THE UNITED STATES

RICHARD PIEPER

Petitioner/appellant

v.

AMERICAN ARBITRATION ASSOCIATION;
R. JEFFREY POLLOCK;
and
GERALD HAMBLY

Respondents

On Petition For a Writ of Certiorari to the United States Court of Appeals (Sixth Circuit)

(U.S. Supreme Court)

B. PETITION FOR A WRIT OF CERTIORARI

Richard Pieper respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (Richard Pieper, Appellant vs. American Arbitration Association Inc., vs R. Jeffrey Pollock, and Gerald Hambly) is reported at 336 F3d 458. The opinion of the U.S. District Court is reported at 2001 WL 1104686

JURISDICTIONAL STATEMENT

Jurisdiction of this matter is advanced pursuant to 28 U.S.C. 1257. The order from which review is sought was entered on July 11, 2003.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provision is 28 U.S.C. 1257.

C. STATEMENT OF CASE

In this matter, in the U.S. District Court, Appellant sought to enjoin certain proceedings in the State courts of Ohio, namely court ordered arbitration proceedings (an interlocutory order) for the reason that arbitration as ordered herein would and did deprive Petitioner of certain federal constitutional rights.

More specifically, in December 1999 Petitioner, Richard Pieper, filed a complaint against Co-Respondent Gerald Hambly in the Lucas County, Ohio, Court of Common Pleas. Hambly filed a motion to compel arbitration in January, 2000, which the court granted on Feb. 16, 2000. Following an objection to the demand for arbitration, another order was issued by the Court of Common Pleas on June 7, 2000, directing that the case proceed to arbitration. On April 18, 2001, shortly before arbitration was scheduled to begin, Petitioner filed a complaint in the United States District Court for the Northern District of Ohio, Western Division, which sought a declaration that the disputes between Petitioner and Respondent were not properly subject to arbitration proceedings and which sought temporary and permanent injunctions barring Respondent from proceeding with arbitration hearings. On that same date, Petitioner filed a

motion for preliminary injunction. On Aug. 29, 2001, the District Court issued an order dismissing the action on the basis that relief was barred by the *Rooker-Feldman* doctrine. Petitioner timely filed a notice of appeal on September 28, 2001 to the United States Court of Appeals for the Sixth Circuit.

The underlying complaint in the Court of Common Pleas alleged that Respondent misappropraiated funds belonging to a close corporation owned by Petitioner and a third party, (who no longer has any financial interest in the outcome of this litigation). In the Court of Common Pleas, Respondent asserted that he was also a shareholder in the corporation, that he was a party to a close corporation agreement entered into between the incorporators of the close corporation, and that pursuant to an arbitration clause in the agreement, Petitioner's claims were required to be arbitrated. Petitioner responded that Respondent was not in

fact a shareholder, that he was thus not a party to the agreement, and that he therefore had no standing to compel arbitration. Nonetheless, the Court of Common Pleas, on Feb. 16, 2000, and on June 7, 2000, directed that the case proceed to arbitration.

The basis for the District Court's subject matter jurisdiction was the existence of federal questions pursuant to 28 U.S.C. Section 1331, with the amount in controversy exceeding $100,000.00 exclusive of costs.

In the underlying complaint filed herein in the District Court, the same underlying facts were alleged, along with the allegations pertaining to the inappropriateness of the case for arbitration. The complaint also alleged that the denial of a jury trial constituted the denial of Pieper's due process rights under the Fifth Amendment of the U.S. Constitution, his right to a jury trial under the Sixth Amendment, and other constitutional

matters. The complaint further alleged that Petitioner would suffer irreparable harm for which he had no adequate remedy at law. The U.S. District Court dismissed such complaint and filed an appeal to the U.S. Circuit Court of Appeals for the Sixth Circuit.

The Federal Court ruled that under the *Rooker-Feldman* doctrine, a federal District Court invariably lacks jurisdiction to review a final State Court judgment, as to matters of an interlocutory nature actually decided by the State court, and may not issue any declaratory relief that is inextricably intertwined with the State court judgment. However, Petitioner argues that the *Rooker-Feldman* doctrine did not bar the case before the District Court, because the State court judgment did not decide the merits of the underlying case, and a District Court Judgment enjoining the arbitration proceedings would not interfere with the State court's ability to decide the underlying case.

Additionally, because any outcome of arbitration would not necessarily have preclusive effect in a subsequent federal court action based upon the denial of Petitioner's Constitutional rights, injunction of the arbitration proceedings would not show disrespect to the authority of the State court.

The underlying complaint from which this particular case emanated was argued in the Court of Common Pleas of Lucas County, Ohio where Petitioner alleged that Respondent Hambly had appropriated money belonging to a corporation owned in part by Petitioner and had placed it in Hambly's own personal accounts. To this day, that remains the sole substantive claim to be decided. Respondent Hambly's attempt to compel arbitration was baseless, in that he was not a shareholder in the corporation and therefore could not enforce the arbitration clause in the close

corporation agreement. Nonetheless, the Court of Common Pleas ordered arbitration.

In response to the complaint filed in the District Court, Respondent Hambly asserted that the action was barred by the *Rooker-Feldman* doctrine, and the court agreed. Federal law invests the United States Supreme Court with exclusive subject matter jurisdiction to review the decisions of the highest state courts. The *Rooker-Feldman* doctrine derives from **Rooker v. Fidelity Trust Company** (1923), 263 U.S. 413 and **District of Columbia Court of Appeals v. Feldman** (1983), 460 U.S. 462. The doctrine instructs that lower federal courts cannot engage in appellate review of State court determinations or constitutional claims that have been previously adjudicated in any State court, or claims that are "inextricably intertwined" with such claims because ruling on them would effectively avoid or reverse an erroneous State court

decision. However, *Rooker-Feldman* should not apply when the State court did not reach the merits of the claim, when the State Court decision is an interlocutory matter. See **Marks v. Stinson**, 19 F.3d 873, 886, fn. 11 (3rd Cir. 1994) (noting that the Court of Common Pleas dismissed the claim without addressing the merits and thus the District Court was not faced with a situation where it was asked to review a determination of the State court).

In the instant case, the State court decision which purportedly precludes federal relief under the *Rooker-Feldman* doctrine was not a decision on the merits, but was simply a dismissal of the case for reasons having nothing to do with the merits. Therefore, the *Rooker-Feldman* doctrine should not bar the District Court from hearing the case and from issuing declaratory and injunctive relief.

The *Rooker-Feldman* doctrine should not apply where the federal court action was filed after the initiation

of State proceedings but prior to the issuance of the judgment by the State court. Thus in **Central Reserve Life Insurance Company v. Marello** (Jan 17, 2001), Civ No 00-3344, unreported, 2001 U.S. District LEXIS 281, the U.S. District Court for the Eastern District of Pennsylvania refused to apply the doctrine and granted the federal plaintiff's petition to compel arbitration, even though the State court had already issued an order denying arbitration.

While in the instant case the federal action followed the State Court's judgment which ordered arbitration, it was filed prior to the arbitration proceedings and thus prior to any decision on the merits of the case, and hence is analogous to **Central Reserve**.

Besides the fact that the State Court judgment at issue did not decide the merits of the underlying case, the fact that the federal District Court in any subsequent proceedings on the merits would not necessarily be bound

by the findings of the arbitration proceedings removes a major basis for the Rooker-Feldman doctrine, namely respect for State court judgments in the federal system. For example, arbitration awards do not always have preclusive effect on subsequent litigation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. Or 42 U.S.C. 1983. See e.g. **Garry v. Geils**, 82 F.3d 1366 (7th Cir. 1996). Moreover, although 28 U.S.C.S. 1738 requires federal courts to give full faith and credit to judicial proceedings of any State Court, an arbitration decision is not a "judicial" preceding of a "court", nor is it equivalent to a State court judgment. See **McDonald v. City of West Branch** (1984), 466 U.S. 284, 290-92. Because any adverse arbitration decision in the instant case will have been due to the violation of Appellant's rights under the Fifth and Sixth Amendment to the United States Constitution, it may well be that in a subsequent action

brought before the District Court for the violation of those rights, the court would not be bound by the arbitration proceedings. This fact further minimizes any minimal interference with authority of the State court that would occur if the District Court were to issue declaratory and/or injunctive relief.

D. REASONS FOR GRANTING THE PETITION

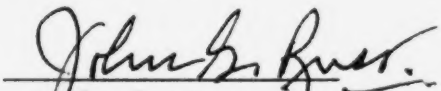
On a frequent basis, lower State Courts are entering interlocutory judgments which violate United States Constitutional provisions and which yet generally are not significantly reviewed by higher State Courts because of such interlocutory nature. The purposes served by the *Rooker-Feldman* doctrine are far less implicated in these interlocutory situations than in the case of final judgments. Some Courts have recognized this and have accordingly found that an interlocutory state court ruling is not subject to the *Rocker-Feldman* doctrine. See, e.g., *Cruz vs. Melecio*, 204 F.3d 14, 21 n. 5 (1st Cir. 2000), which observed that "[D]enying jurisdiction based on a state court judgment that is not eligible for review by the United States Supreme Court simply would not follow from the jurisdictional statute that invigorated the *Rooker-Feldman* doctrine in the first place." However, the lower courts in

general have failed to properly limit the doctrine to final judgments, as a result of which thousands of litigants find themselves caught in the limbo of unappealable, unconstitutional lower court decisions.

The doctrine as applied in this and similar cases permits some state courts to violate Federal rights with impunity knowing that in most cases litigants will not have resources to pursue the matter all the way to the State Supreme Court and the United States Supreme Court. A decision to review this case will help restore a proper balance between the primacy of the United States Constitution and a proper regard for state-federal relations.

E. CONCLUSION

It is urged that the petition for writ of certiorari should be granted.



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RICHARD PIEPER

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Petition For Writ of Certiorari to the United States Court of Appeals (Sixth Circuit)

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APPENDIX

APPENDIX

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1. **Order, United States Court of Appeals (Sixth Circuit) (Dated July 11, 2003)**

2. **Judgment Order of U.S. District Court dated August 29, 2002.**

3. **Order of U.S. District Court dated August 29, 2002.**

In the

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RICHARD PIEPER
Petitioner/appellant,

No. 01-4043

v.

AMERICAN ARBITRATION ASSOCIATION, INC.;
R. JEFFREY POLLOCK;
GERALD HAMBLY,
Defendant/Appellees.

Appeal from the United States District Court for the Northern District of Ohio at Toledo. No. 01-07193 --James G. Carr, District Judge

Argued: November 14, 2002

Decided and Filed: July 11, 2003

Before: MOORE and COLE, Circuit Judges; SARGUS, District Judge.*

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*The Honorable Edmund A. Sargus, Jr., United States District Judge for the Southern District of Ohio, sitting by designation.

COUNSEL

ARGUED: George R. Royer, Toledo, Ohio for Appellant. John P. Gustafson, Toledo, Ohio for Appellees.

ON BRIEF: George R. Royer, Toledo, Ohio for Appellant; John P. Gustafson, Toledo, Ohio for Appellees

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OPINION

KAREN NELSON MOORE, Circuit Judge. Plaintiff-Appellant Richard Pieper ("Pieper") was ordered by an Ohio state court to arbitrate the disputes that arose between him and one of the defendants-appellees, Gerald Hambly. Before arbitration began, however, Pieper brought a lawsuit in the U.S. District Court for the Northern District of Ohio, claiming that dispute was not properly subject to arbitration and seeking injunctive relief that would bar the defendant-

Appellee American Arbitration Association, Inc. from proceeding with arbitration hearings.

The district judge granted the defendants' motion to dismiss, holding that the district court was without jurisdiction to grant plaintiff relief under the *Rooker-Feldman* doctrine, which generally prohibits federal courts from reviewing state-court judgments. For the reasons that follow, we **AFFIRM** that judgment.

I. BACKGROUND

On December 14, 1999, Pieper brought an action against Gerald Hambly and several other individuals in Ohio state court. Pieper, Hambly, and others had agreed to form a home-construction business. Pieper was supposed to have a one-third interest in the corporation, All Points Investment, Inc. However, according to the state-court complaint, the defendants improperly assumed control of the corporation in violation of Ohio law. The complaint

also alleged that the defendants withdrew funds and assets from the corporation without approval of the board of directors and for their personal use, fraudulently purchased real estate, trespassed on the plaintiff's property, and eventually sold the corporation without a vote of the board of directors. The complaint did not raise any federal issue.

Hambly filed a motion to stay the state-court proceedings pending arbitration and to compel arbitration in January of 2000. The state trial court granted Hambly's motion on February 16, 2000. Pieper objected, and the state court again directed arbitration over Pieper's protest. At no point did Pieper appeal this determination to an Ohio appellate court, even though such an order is appealable under OHIO REV. CODE ANN. Sec. 2711.02.

Hambly, filed a complaint in arbitration, accusing Pieper of embezzlement, accounting negligence, fraud, and malpractice, among other claims. The arbitration hearing

was originally scheduled for March of 2001, but was pushed back to April 19, 2001, by request of Pieper's counsel. The day before the arbitration was to begin, on April 18, 2001, Pieper filed this lawsuit in federal court, which sought a declaration that the disputes between Pieper and Hambly were not properly subject to arbitration. Hambly was not initially a defendant in the federal lawsuit; Pieper sued the American Arbitration Association and the arbitrator scheduled for the case. Hambly moved to intervene, and the motions was granted. Hambly then filed a motion to dismiss, alleging that the Rooker-Feldman doctrine prohibited federal-court jurisdiction, and he also moved for sanctions. The district court granted the motion to dismiss but denied the motion for sanctions.

Pieper has appealed to this court. Hambly, has filed a motion for sanctions under Federal Rule of Appellate

Procedure 38(a), alleging that Pieper has filed a frivolous appeal.

II. ANALYSIS

A. The Rooker-Feldman Question:

The principal issue in this case is whether the district court properly dismissed the case because of a lack of subject matter jurisdiction. This Court reviewed *de novo* a district court's grant of a motion to dismiss on the basis of subject matter jurisdiction. *Tropf v. Fidelity Nat'l Title Ins.* Co., 289, F3d 929, 936 (6th Cir. 2002) *cert. denied,* 123 S. Ct. 887 (2003).

The *Rooker-Feldman* doctrine is derived from two Supreme Court Cases which established that "lower federal courts lack subject matter jurisdiction to engage in appellate review of state court proceedings." *Peterson Novelties, Inc. V. City of Berkley*, 305 F.3d 386, 390 (6th Cir. 2002); *see also Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923);

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, (1983). The Court has summarized the doctrine as being designed to prevent "'a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment [in the lower federal courts] based on the losing party's claim that the state judgment itself violates the loser's federal rights.'" *Tropf*, 289 F.3d at 936-37 (citing *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)).

The *Rooker-Feldman* doctrine bars relitigation of claims raised in state-court proceedings as well as claims that are "inextricably intertwined" with the claims asserted there. *See Catz v. Chalker*, 142 F. 3d 279, 293 (6th Cir. 1998). In practice this means that when granting relief on the federal claim would imply that the state-court judgment on the other issues was incorrect, federal courts do not have jurisdiction: "'Where federal relief can only be predicated

upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.'" *Id.* (citation omitted). The *Rooker-Feldman* doctrine, however, does not bar jurisdiction when the plaintiff's claim is merely "a general challenge to the constitutionality of the state law applied in the state action," rather than a challenge to the law's application in a particular state case. *Tropf*, 289 F. 3d at 937 (quoting *Catz*, 142 F. 3d at 293).

At first glance, it seems indisputable that the *Rooker-Feldman* doctrine applies here. Pieper has several federal claims; he alleges that the state court's order compelling arbitration violates his due process rights, his right to jury trail, and his right to confront witnesses. All of these claims, however, are attacks on the state court's order compelling arbitration (though we note that none of them

was actually raised in the state-court litigation). Since it would be impossible to grant Pieper relief on any of these claims without calling into question the state court's arbitration decision, Pieper's federal claims are inextricably intertwined within the meaning of Rooker-Feldman's bar. [1] Having reached this conclusion, we would normally dismiss Pieper's case immediately.

This case, however, has a twist. Pieper implicitly argues that *Rooker-Feldman's* bar should not apply here because the state-court order requiring arbitration was not reviewable by the Supreme Court under 28 U.S.C. Section 1257, because it was not a final judgment or a decision by the highest court of a State. Such a claim has not been addressed by our circuit before. To understand this

Section 1257, which is the root of *Rooker-Feldman* doctrine and which reads, in part, as follows:

[1] We note that Pieper's claim is that the state court's judgment actively caused him injury (not that the judgment failed to redress a preexisting injury). This suggests that, of the related doctrines of res judicata and Rooker-Feldman, it is the Rooker-Feldman doctrine that applies here. See Hitcherson v. Lauderdale County, Tenn., 326 F. 3d 747, 755 (6th Cir. 2003).

doctrine and which reads, in part, as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari [when they raise a federal question] . . . . .

argument, one must start by looking at the text of 28 U.S.C On its face, this statute simply grants to the Supreme Court the ability to consider appeals from the highest court of each state. In the *Rooker* and *Feldman* cases, however, the Supreme Court drew an important negative inference from this statutory language. This negative inference is that

because the Supreme Court was specifically given jurisdiction to hear appeals from final judgments of the highest state courts, lower federal courts do not have jurisdiction to review such judgments. See Feldman, 460 U.S. at 482 (noting that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings" because "[r]eview of such judgments may be had only in this Court").

A close reading of Section 1257 reveals that the first sentence gives the Supreme Court power to review only a certain subset of state-court decisions, namely *final judgments or decrees* that are *rendered by the highest court of a State in which a decision could be had.* In essence, Pieper argues that *Rooker-Feldman* does not apply to the state-court order compelling arbitration because it was not a final judgment and also was not rendered by the highest

state court. [2] The basic argument under this view is that the *Rooker-Feldman* doctrine is only necessary to effectuate the negative implication of 28 U.S.C. Section 1257-it is

[2] It is clear that the state trial court's order granting a motion to stay state-court litigation and compel arbitration was not rendered by the highest court of the state in which a decision could be had. In fact, the state trial court's order was immediately appealable under OHIO REV. CODE ANN. Section 2711.02. The fact that Pieper chose not to appeal the order does not change that analysis.

It also appears that the order staying litigation and compelling arbitration was not a final judgment or decree within the meaning of Section 1257. The Supreme Court has explained that "[t]o be reviewable by this Court, a state-court judgment must be final in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final work of a final court.'" *Jefferson v. City of Tarrant, Ala.*, 522 U.S. 75, 81 (1997) (citation omitted). The state-court judgment here seems final in neither sense. It *is* reviewable in

another state tribunal, and it does *not* determine the litigation. *See Owens Flooring Co. V. Hummel Constr. Co.*, 749 N.E.2d 782, 784 (Ohio Ct. App. 2001) (explaining that although an order staying litigation pending arbitration is immediately appealable, it is not a final judgment under Ohio law). It therefore appears that the state-court order was not final within the meaning of Section 1257. Of course, our conclusion that the *Rooker-Feldman* doctrine applies equally to interlocutory orders as well as final judgments obviates any need conclusively to resolve this issue-for regardless of whether the order staying litigation pending arbitration is interlocutory or final, we hold that Pieper cannot relitigate it here.

Needed only to prevent lower federal courts from considering cases that the Supreme Court is permitted to hear under the statute. When the state-court judgment is not final or is not rendered by the highest state court, Supreme Court review under Section 1257 is impossible. This, according to the argument, makes Rooker-Feldman in applicable. [3]

We reject this argument and join with the majority of

[3] Of course, Section 1257 also only permits review of final state-court decisions that involve a federal question. Since Pieper's state[court complaint did not raise a federal question-the constitutional issues were raised only in the federal lawsuit-Pieper could argue that the lack of federal questions in the state-court lawsuit is another reason why *Rooker-Feldman* is inapplicable here, because the lack of a federal issue provides another reason why the Supreme

Court could never have reviewed the state-court case under Section 1257.

The Supreme Court, however, has already rejected this argument, and so must we as well. See *Feldman*, 460 U.S. at 482 n. 16 (explaining that "the fact that we may not have jurisdiction review a final state court judgment because of a petitioner's failure to raise his constitutional claims in state court does not mean that a United States District Court should have jurisdiction over the claims").

circuits that have concluded that the *Rooker-Feldman* doctrine does apply to interlocutory orders and to orders of lower state courts.

First like other federal courts of appeals, we find it difficult to believe that lower federal courts are prohibited from reviewing final state-court judgments, but yet are somehow permitted to review interlocutory decisions. The D.C. Circuit put this point forcefully:

> We cannot imagine how one could reconcile *Feldman's* reasoning, based as it is on allowing state courts to arrive at decisions free from collateral federal attack, with the idea that the district court would be free to

> review Richardson's suspension so long as the decision was *interlocutory*.

Richardson v. District of Columbia Court of Appeals, 83 F. 3d 1513, 1515 (D.C. Cir 1996) (italics in original). This point has also been made by the numerous other circuits who have adopted this position. See. e.g., *Brown & Root, Inc. v. Breckenridge,* 211 F. 3d 194, 199 (4th Cir. 2000) (stating that "[i]t cannot be the meaning of *Rooker-Feldman* that, while the inferior federal courts are barred from reviewing *final* decisions of state courts, they are free to review interlocutory orders") (quoting *Doctor's Assocs., Inc. v. Distajo*, 107 F. 3d 126, 138 (2d Cir.), *cert. denied*, 522 U.S. 948 (1997)); *see also Campbell v. Greisberger*, 80 F.3d 703, 707 (2d Cir. 1996); *Port Auth. Police Benev. Ass'n, Inc. v. Port Auth.* & N.Y. & N.J. Police Dep't, 973 F.2d 169,178 (3d Cir. 1992); *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F3d 1096, 1103 (9th Cir. 2003); *Kenmen*

Eng'g v. City of Union, 314 F3d 468, 474 (10th Cir. 2002). But see *Cruz v. Melecio*, 204 F.3d 14, 21 n. 5 (1st Cir. 2000) ("[D]enying jurisdiction based on a state court judgment that is not eligible for review by the United States Supreme Court simply would not follow from the jurisdictional statute that invigorated the Rooker-Feldman doctrine in the first place."); cf. *Siegel v. Lepore*, 234 F.3d 1163, 1172 (11th Cir. 2000). [4]

[4] Commentators have noted the split. See Jean R. Sternlight, *Forum Shopping for Arbitration Decisions: Federal Courts' Use of Antisuit Injunctions Against State Courts*, 147 U. Pa. L. REV. 91, 142 (1998) (noting that "it is not entirely clear whether the *Rooker-Feldman* doctrine applies only to final judgments, or also to interlocutory rulings"); 18 MOORE'S FEDERAL PRACTICE Section 133.30[3][b], at 133-24 (3d ed. 2000) (noting that "[s]ome circuits have held that the *Rooker-Feldman* doctrine, unlike preclusion, does not depend on the existence of a final state court judgment on the merits, but also applies to interlocutory decisions").

Moore's Federal practice suggests that this circuit has implied that the *Rooker-Feldman* doctrine applies only to final judgments. See 18 MOORE'S FEDERAL PRACTICE Section 133.30[3][b], at 133-24 n. 20 (3d ed. 2000) (citing *United States v. Owens*, 54 F.3d 271, 274 (6th Cir. 1995))). It is true that *Owens* intimates, to some extent, that a final state-court judgment is required for the *Rooker-Feldman*

doctrine to be applicable. See *Owens*, 54 F.3d at 274 (stating that "the doctrine may not bar a party against whom there is no state court judgment"). The *Owens* court, however, was not making a statement about the necessity of a final judgment-it was merely making the point that the *Rooker-Feldman* doctrine could not apply to parties that were not present in the state-court litigation. *See id.* ("Because the Postal Service was not a party in state court action is this case, the *Rooker-Feldman* doctrine does not apply.") the language in Owens arguably suggesting that a final judgment (rather than an interlocutory order) is necessary for *Rooker-Feldman* to apply was wholly inadvertent, and we do not consider it dispositive of the issue here.

For similar reasons, we do not believe that lower federal courts should be prohibited from reviewing Judgments of a state's highest court but should somehow have free rein to review the judgments of lower state courts. The Supreme Court has repeatedly used language suggesting that *Rooker-Feldman's* bar applies to judgments of lower state courts as well as to those of a state's highest court. See *Feldman*, 460 U.S. at 483 n. 16 (explaining that "lower federal courts possess no power whatever to sit in direct review of state court decisions'") (citing *Atlantic Coast Line R.R Co. v. Bhd. Of Locomotive Eng'rs,* 398 U.S. 281, 296 (1970)).

Moreover, appellate courts that have considered the question have also generally rejected the argument, and have held that the *Rooker-Feldman* doctrine apples equally to orders of lower courts. See *Hill v. Town of Conway*, 193 F.3d 33, 40 (1st Cir., 1999); *Port Auth.*, 973 F 2d at 178; *Jordahl v. Democratic Party of Virginia*, 122 F3d 192, 199 (4th Cir. 1997), *cert denied*, 522 U.S. 1077 (1998); *Wilson*, 326 F3d at 1103; *Kenmen*, 314 F3d at 473. But see *FDIC v. Meyerland Co.* (In RE Meyerland Co.), 960 F2d 512, 516 (5th Cir., 1992), *cert. denied*, 506 U.S. 1049 (1993).

Ultimately, we conclude that this argument depends upon a faulty premise. It presumes that the *Rooker-Feldman* doctrine exists only to prevent lower federal courts from considering cases that the Supreme Court could hear under Section 1257 and that the *Rooker-Feldman* doctrine does not apply when the underlying state-court judgment is not amenable to review in the supreme Court.

Under this view, the Supreme Court's lack of jurisdiction essentially "creates" jurisdiction for the lower federal courts. The Supreme Court's lack of jurisdiction, however, seems to us actually to be a stronger argument *against* lower federal-court jurisdiction than in favor of it. See CHARLES ALAN WRIGHT ET AL., 18B FEDERAL PRACTICE AND PROCEDURE Section 4469.1 at 146-47 (2d ed. 2002 & Supp. 2003). ("Of course the prospect that there may never be Supreme Court jurisdiction may support the further conclusion that district court subject-matter jurisdictions even less appropriate.") cf. *Doe & Assocs. Law Offices v. Napolitano*, 252 F3d 1026, 1030 (9th Cir. 2001) ("[T]he *Rooker-Feldman* doctrine is not premised on the availability of Supreme Court review of the state court decision."). We believe that it is untenable that the Supreme Court's lack of jurisdiction over interlocutory appeals or appeals from lower state courts somehow opens up the

possibility of review in the lower federal courts. As a matter of logic, such an inference is not warranted, as the statement that lower federal courts should not have jurisdiction where the Supreme Court has jurisdiction (the *Rooker-Feldman* doctrine) does not logically imply that lower federal courts *should always have* jurisdiction when the Supreme Court *does not.* [5]

Necessity also seems to compel the conclusion that the *Rooker-Feldman* doctrine applies here. The only federal circuit to have considered specifically the applicability of the *Rooker-Feldman* doctrine to an interlocutory order to stay litigation pending arbitration concluded that the doctrine applies to such orders. See *Brown & Root*, 211 F.3d at 199. To hold otherwise would allow potential relitigation of

[5] In fact, a natural reading of 28 U.S. C. Section 1257 suggests that no federal court (neither inferior nor

Supreme) has jurisdiction over appeals from non-final state court orders or from orders and decisions of lower state courts. Such a reading supports our conclusion that the *Rooker-Feldman* doctrine is appropriately applied to interlocutory orders and judgments of lower state courts.

every state-court order staying litigation and compelling arbitration. This case is a perfect example of such a possibility. The state-court lawsuit between these parties did not involve any federal issue (nor were the parties diverse). After the state court stayed the state-court litigation and ordered arbitration, the dissatisfied party (Pieper) filed this federal lawsuit, arguing that the state-court order requiring arbitration violated his due process rights and his constitutional right to a jury trial. If Pieper were permitted to circumvent the state court's order staying litigation and compelling arbitration, so could any party who is forced by a state court to arbitrate its disputes. Any party dissatisfied with a state court's order compelling arbitration

and staying litigation could simply file a federal lawsuit, claiming that the state court's order itself violated his Fifth or Seventh Amendment rights.

Our conclusion that we lack jurisdiction in this case does disturb us, however, in one respect. Under Ohio law, interlocutory orders cannot form the basis for claims of res judicata or collateral estoppel. See *State ex rel. Comm. For the Referendum of City of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. Of Elections*, 774 N.E.2d 239, 247 (Ohio 2002) (noting that res judicata does not apply to an interlocutory order); *Butler Cty. Bd. Of Comm'rs v. City of Hamilton*, 763 N.E.2d 618, 626 (Ohio Ct. App. 2001) (noting that, for issue preclusion to apply, there must be a "final judgment on the merits in the previous case"). As a result, we must concede that we are barring federal-court jurisdiction here even though state courts in Ohio would not be bound by the state-court judgment here. See CHARLES

ALAN WRIGHT ET AL., 18B FEDERAL PRACTICE AND PROCEDURE Section 4469.1 at 147 (2d ed. 2002 & Supp. 2003) (noting that "[i]t seems particularly questionable to bar federal-question jurisdiction if the courts of other states, and indeed other courts of the same state, would have jurisdiction to entertain the same federal question"). Although this is somewhat disconcerting, we conclude that the balance of arguments discussed above favors application of the Rooker-Feldman doctrine here. We therefore affirm the district court's decision to dismiss this case for lack of subject-matter jurisdiction.

B. Sanctions on Appeal

Appellee Hambly has filed against Pieper a motion for sanction for filing a frivolous appeal under Federal Rule of Appellate Procedure 38. "Rule 38 allows a court of appeals to award appellee 'just damages and single or double costs' in a frivolous appeal." *Barney v. Holzer*

Clinic Ltd., 110 F3d 1207, 1212 (6th Cir. 1997) (citation omitted.) "Although the term 'frivolous' is not subject to a ready-made definition, generally '[a]n appeal is frivolous when the result is obvious or when the appellant's argument is wholly without merit.'" *Allinder v. Inter-City Prods. Corp.* (USA) 152 F3d 544, 552 (6th Cir. 1998) (citation omitted), *cert denied*, 525 U.S. 1178 (1999). Here, it cannot be said that Pieper's argument was wholly without merit or that the result in this case was foreordained. As was the case in *Barney*, "[t]he central issue was one of first impression" in this circuit. *Barney*, 110 F3d at 1213. We had not previously decided the question, and although several courts have sided against Pieper on the matter, one federal appellate court has in fact adopted Pieper's position. See *Cruz*, 204 F.3d at 21 n. 5. This undercuts any argument that Pieper's appeal was frivolous.

III. CONCLUSION

For the foregoing reasons, the judgment of the district court is **AFFIRMED**. The defendant's motion for sanctions under Federal Rule of Appellate Procedure 38 is **DENIED**.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Richard Pieper 3:01CV7193

Plaintiff

vs. **JUDGMENT ENTRY**

American Arbitration Association, et al.,

Defendants

For the reasons stated in the Order filed on August 29, 2001

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. Defendant's motion to dismiss be, and hereby is, granted; and
2. Defendant's motion for sanctions be, and hereby is, denied.

3. Case closed

/s/ James G. Carr
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Richard Pieper 3:01CV7193

Plaintiff

vs. **ORDER**

American Arbitration Association, et al.,

Defendants

This is a case in which plaintiff seeks declaratory judgment that a dispute between himself and defendant Hamly is not subject to arbitration. The dispute has been ordered to arbitration in two separate orders issued by the Lucas County Court of Common Pleas. Pending are defendant's motion to dismiss the complaint and for sanctions. For the following reason, defendant's motion to dismiss is granted, and the motion for sanction is denied.

BACKGROUND

In or around 1997, Pieper and Hambly, along with a third potential shareholder, formed a corporation called All-Points Investments, Inc. As incorporation of the corporation, the three potential shareholders signed an agreement providing for arbitration for resolution of disputes among shareholders.

After disputes arose between Hambly and Pieper, Pieper filed a complaint against Hambly in December, 1999 in the Lucas County Court of Common Pleas. Defendant Hambly filed a motion to compel arbitration in January, 1999. An order granting Hambly's motion to compel arbitration was issued on February 16, 2000.

The February 16 order allowed for the parties to mediate the dispute before proceeding to arbitration, but mediation never occurred. On May 8, 2000, Pieper filed an

objection to Hambly's demand for arbitration. On June 7, 2000, another order was issued by the court of common pleas directing that the case proceed to arbitration.

On April 18, 2001, one day before the arbitration was scheduled to begin, Pieper filed a complaint in this court seeking an injunction barring arbitration proceedings, as well as declaratory judgment that the disputes between Pieper and Hambly are not properly subject to arbitration.

Discussion

I. Motion to Dismiss

Hambly assets that in filing the complaint in the present action, plaintiff improperly seeks appellate review of a state court determination in violation of 28 U.S.C. Section 1257(a). I agree.

State court decisions may be reviewed only by the United States Supreme Court; United States District Courts may exercise only original jurisdiction. 28 U.S.C.

Section(a) 1257(a), 1331, 1332. Because plaintiff seeks review of the decision of the Lucas County Court of Common Pleas directing the dispute to arbitration, I have no jurisdiction to entertain plaintiff's complaint.

The Rooker-Feldman doctrine precluded me from exercising jurisdiction in this case, notwithstanding the fact that Pieper raiser federal constitutional claims for the first time. Pieper's claims that arbitration proceedings will effect deprivation of his Fifth and Sixth Amendment rights is inextricably intertwined with his other objections, argued to the state court, to arbitration of the present dispute. "The 'inextricably intertwined' prong of the [Rooker-Feldman] doctrine bars a claim, not only where the claim was actually decided by the state court, but also where success of the federal claim depends upon a determination that the state court wrongly decided the issue before it.'" Plyler v. Moore, 129 F.3d 728, 731 (45h Cir. 1997). If the

constitutional claims presented to a United States district court are inextricably intertwined with a state court's decision and order, then the district court is being called on to review the state court decision. This a district court cannot do. See District of Columbia Court of Appeals et al. V. Feldman et al., 460 U.S. 462, 483. United States district courts do not have jurisdiction over challenges to state court decisions even if those challenges allege that the state court's action was unconstitutional. Id. At 486.

Plaintiff's only argument against application of the Rooker-Feldman doctrine in this case is based on the fact that the state court's order compelling arbitration is not a final order. The doctrine, however, "also applies to interlocutory orders issued by state courts. Indeed, 'it cannot be the meaning of Rooker-Feldman that, while the inferior federal courts are barred from reviewing final decisions of state courts, they are free to review

interlocutory orders.'" Brown and Root, Inc. v. Breckenridge, 211 F. 3d 194, 199 (4th Cir 2000 (citing Doctor's Assoc., Inc. v. Distajo, 107 F. 126, 138 (2d Cir. 1997); Charchenko v. City of Stillwater, 47 F.3d 981, 983 n.1 (8th Cir. 1995).

Accordingly, defendant's motion to dismiss shall be granted.

II. Motion for Sanctions

Defendant seeks imposition of sanction under Fed. R. Civ. P.11. While I find that plaintiff's attorney exercised poor judgment in filing the instant complaint, I do not believe that he brought the complaint with an improper purpose or malign intent. Thus, defendant's request that I impose sanctions are denied.

Therefore, it is hereby

Ordered that

1. Defendant's motion to dismiss be, and hereby is, granted; and

2. 2. Defendant's motion for sanctions be, and hereby is, denied.

So Ordered.

/s/ James G. Carr
James G. Carr
United States District Judge

(2)

Supreme Court, U.S.
FILED
JAN 14 2004
OFFICE OF THE CLERK

No. 03-880

In The Supreme Court of the United States

RICHARD PIEPER,

Petitioner,

v.

AMERICAN ARBITRATION ASSOCIATION

and

GERALD HAMBLY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals To The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Rooker-Feldman* doctrine bars a Federal Court from assuming jurisdiction relative to a state court's final appealable order that a matter proceed to arbitration, after the time for appeal has passed without an appeal having been filed.

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STATUTE

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I. STATEMENT OF THE CASE

This case involves a dispute between shareholders of All Points Investment, Inc., an Ohio Corporation. The dispute comes before this Court on Plaintiff's appeal of a decision by the Sixth Circuit Court of Appeals affirming the District Court's decision in favor of the defendant, Gerald Hambly, granting his 12(b)(6) motion to dismiss for lack of subject matter jurisdiction base upon the *Rooker-Feldman* doctrine.

Petitioner has based his arguments in favor of *certiorari* upon an erroneous statement of law, that the state court order requiring that this matter proceed to arbitration was interlocutory.

During the course of the litigation, Petitioner never cited a single case which stood for the proposition that the *Rooker-Feldman* doctrine did not apply to interlocutory orders. Because the case law initially discovered by Respondent Hambly was unanimous in holding that interlocutory orders were not subject to collateral attack in federal courts, the underlying claim that the state court's order was "interlocutory" never researched.

During oral argument before the Sixth Circuit Court of Appeals, that Court indicated that its preliminary research had indicated that one appellate court, the First Circuit Court of Appeals, had held in *Cruz v. Melecio*, 204 F.3d 14, 21 n.5 (1st Cir. 2000), that the *Rooker-Feldman* doctrine did not apply to interlocutory orders.

The time for submitting written arguments having passed prior to oral arguments, no further response was made before the Sixth Circuit Court of Appeal issued its decision in this case.

However, a review of Ohio law clearly reflects that the decision by a state court granting or denying a request to compel arbitration is a final, appealable order, and Petitioner simply failed to timely exercise his appellate rights in this case.

II. REASONS FOR DENYING THE WRIT

Ohio law provides that an order that grants or denies a stay of a trial of any action pending arbitration is a final order, and may be reviewed on appeal as a matter of right. As Section 2711.02(C) of the Ohio Revised Code states:

> (C) Except as provided in division (D) of this section, an order under division (B) of this section that grants or denies a stay of a trial of any action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 25 of the Revised Code.

The fact that arbitration orders are final and appealable has been acknowledged by numerous Ohio court decisions. *See, Maestle v. Best Buy Company*, 100 Ohio St.3d 330, ___ n.1, 800 N.E.2d 7, __ n.1 (2003); *Gerig v. Kahn*, 95 Ohio St.3d 478, 480 n.7, 769 N.E.2d 381, 384 n.7 (2002); *Cross v. Carnes*, 132 Ohio App.3d 157, 164 n.6, 724 N.E.2d 828, 833 n.6 (1998); *Board of Library Trustees v. Ozanne Construction Company, Inc.*, 100 Ohio App.3d 26, 28, 651 N.E.2d 1356 (1995); *Mabrey v. Victory Basement*

Waterproofing, Inc., 92 Ohio App.3d 8, 13, 633 N.E.2nd 1205, 1208-1209 (1993); *Kelm v. Kelm*, 73 Ohio App.3d 395, 398, 597 N.E.2d 535, 536 (1992); *Stewart v. Shearson Lehman Brothers, Inc.*, 71 Ohio App.3d 305, 593 N.E.2d 403 (1992) (discussing enactment of R.C. §2711.02, effective May 31, 1990); *See also*, 4 Ohio Jurisprudence 3d *Appellate Review*, §66 at pages 152-154 (1999).

While the First Circuit Court of Appeal's holding in *Cruz v. Melecio*, 204 F.3d 14, 21 n.5 (1st Cir. 2000) is erroneous, and should be reversed, this case does not present the Court with the issue of a collateral attack in federal court on a state court's interlocutory order. Instead, as demonstrated in the above citations, the order compelling arbitration was a final appealable order.

There are few legal principles more firmly established than the *Rooker-Feldman* doctrine, as set forth in *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923), *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Asarco, Inc. v. Kadish*, 490 U.S. 605, 622-623 (1989). Accordingly, there is no reason for this Court to grant Certiorari on the issue of Petitioner's collateral attack in federal court on a garden variety final and appealable state court order compelling arbitration.

III. CONCLUSION

For all of the reasons set forth above, Respondent respectfully requests this Honorable Court deny the Petition for the Writ of Certiorari.

Respectfully submitted,

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